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No. _____

**In The
Supreme Court of the United States
October Term, 1991**

**CELENE RHEINSTROM, ADMINISTRATOR OF
THE ESTATE OF MOLLIE RHEINSTROM
POLLENZ, Deceased,**
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**CELENE RHEINSTROM
426 Wellington
Chicago, Illinois 60675
(312) 472-2029**

QUESTION PRESENTED

Whether the United States Court of Appeals, for the Seventh Circuit, in affirming the United States Tax Court, correctly held that the value of public housing agency obligations owned by the decedent at her death, was properly includible in her gross estate, for federal tax purposes, notwithstanding that the deficiency notice issued to the estate predated the Supreme Court's decision that ultimately determined that such obligations were subject to the estate tax.

Whether the Treasury of the United States had a right to collect an obligation when Section 642, of the Deficit Reduction Act of 1984, (DEFRA) Public Law 98-369, 98 Stat. 939-940, made no demand for payment of tax, but only required the reporting of said securities, to the Secretary of the Treasury.

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
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NOW COMES the administrator, CELENE RHEINSTROM, and prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit, entered in the above-entitled case on February 28, 1991, and received by the lawyer for the administrator, on March 2, 1991.

OPINION BELOW

The opinion of the Circuit Court of Appeal, for the Seventh Circuit (R) is reported at 925 F2d 1066 (1991).

JURISDICTION

The judgment and opinion of the Court of Appeals for the Seventh Circuit, were entered February 28, 1991. A timely Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 and 8 U.S.C. § 1255; F.C.A. 28 § 1255.

STATUTE INVOLVED

The pertinent portions of the Deficit Reduction Act of 1984 (DEFRA), section 642(a), Public Law 98-369, 98 Stat. 939-940., and section 6501(a) of the Internal Revenue Code, 26 U.S.C., provides that that a holder of project notes was obligated to report the amount and date of such transfer, and the provisions of section 6501(a) limited the right of collection of deficiency not assessed within three years after a tax return is filed.

STATEMENT

This suit seeks to recover, or have refunded the estate tax paid, or the determination that the determination that the assessment, in the first instance was wrong, or incorrect, in sum and date used, or in the alternative that the obligation to pay, was error in its self.

FACTUAL HISTORY

The decedent, MOLLIE RHEINSTROM POLLENZ, died on February 4, 1984. Her estate timely filed its tax return on November 5, 1984. The return listed public housing agency bonds, called "project notes", with a total value of \$1,171,257.69, at Ms. Pollenz's death. These notes, however, were excluded from the gross estate for the purpose of computing the estate tax due. The decision to exclude the project notes from the gross estate apparently was made in reliance on *HAFFNER v. UNITED STATES*, 585 F. Supp. 354(N.D. Ill. 1984), *aff'd*, 757 F.2d 920(7th Cir. 1985), which had held that tax exempt public housing obligations were not subject to federal taxation.

On October 14, 1987, the IRS mailed to the estate a deficiency notice, which advised that a deficiency in estate tax had been determined in the amount of \$674,540.19. This deficiency resulted from the IRS' inclusion of the project notes in the gross estate. The estate responded by petitioning the United States Tax Court for a redetermination of the deficiency. The Tax Court granted the IRS' motion for summary judgment on the basis of the Supreme Court's decision in *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988). The Tax Court noted that "i(n) 1988, the Supreme Court, held that project notes never were exempt from Federal estate tax. *Pollenz v. Commissioner*, 58 T.C.M. (CCH) 1054 (1989).

The tax Court also rejected the argument that the notice of deficiency was invalid because of *Section 642 of the Deficit Reduction Act of 1984(DEFRA)*, Pub. L. 98-369, 98 Stat. 939-940. The important part from that statute, reads that:

(a) **GENERAL RULE.** With respect to transfers of public housing bonds occurring after December 31, 1983 and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

(b) **PENALTY FOR FAILURE TO REPORT.** Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.

In the Circuit Court of Appeal, *Pollenz v. Commissioner*, 925 F.2d 1066 (Cir. 7th 1991), the court affirmed the tax court holding.

THE QUESTION IS SUBSTANTIAL

Whether the constitution allows the taking of property from a person that has comported with the promulgated law, as in this instance.

CONCLUSION

For the aforesaid reasons stated in this writ, that this honorable court grant petitioner leave to proceed, in this court of final review.

Respectfully submitted

CELENE RHEINSTROM
426 Wellington
Chicago, Illinois 60675
(312)-472-2029



APPENDIX

In the
United States Court of Appeals
For the Seventh Circuit

No. 90-1073

CELENE RHEINSTROM, Administrator of the Estate
of MOLLIE RHEINSTROM POLLENZ, Deceased,
Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

On Appeal from the United States Tax Court.
No. 39448-87—Charles E. Clapp, *Judge.*

ARGUED NOVEMBER 7, 1990—DECIDED FEBRUARY 28, 1991

Before BAUER, *Chief Judge*, POSNER and RIPPLE, *Circuit Judges.*

RIPPLE, *Circuit Judge.* The Internal Revenue Service (IRS) issued a notice of deficiency to the estate of Mollie R. Pollenz. The estate petitioned the Tax Court for a re-determination of the deficiency. The court granted the IRS' motion for summary judgment. The estate appealed. For the following reasons, we affirm the judgment of the Tax Court.

I

BACKGROUND

The decedent, Mollie R. Pollenz, died on February 4, 1984. Her estate timely filed its tax return on November 5, 1984. The return listed public housing agency bonds, called "project notes," with a total value of \$1,171,257.69 at Ms. Pollenz's death. These notes, however, were excluded from the gross estate for the purpose of computing the estate tax due. The decision to exclude the project notes from the gross estate apparently was made in reliance on *Haffner v. United States*, 585 F. Supp. 354 (N.D. Ill. 1984), *aff'd*, 757 F.2d 920 (7th Cir. 1985), which had held that tax-exempt public housing obligations were not subject to federal taxation.

On October 14, 1987, the IRS mailed to the estate a deficiency notice, which advised that a deficiency in estate tax had been determined in the amount of \$674,540.19. This deficiency resulted from the IRS' inclusion of the project notes in the gross estate. The estate responded by petitioning the United States Tax Court for a re-determination of the deficiency. The Tax Court granted the IRS' motion for summary judgment on the basis of the Supreme Court's decision in *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988). The Tax Court noted that "[i]n 1988, the Supreme Court held that project notes never were exempt from Federal estate tax."¹ *Pollenz v. Commissioner*, 58 T.C.M. (CCH) 1054, 1055 (1989).

The Tax Court also rejected the argument that the notice of deficiency was invalid because of section 642 of the Deficit Reduction Act of 1984 (DEFRA), Pub. L. 98-369, 98 Stat. 939-940. Section 642 reads:

¹ In *Wells Fargo*, the Supreme Court noted that, "[w]ell before the Housing Act was passed, an exemption from all taxation had an understood meaning: the property was exempt from *direct* taxation, but certain privileges of ownership, such as the right to transfer ownership, could be taxed." *United States v. Wells Fargo Bank*, 485 U.S. 351, 355 (1988) (emphasis in original).

(a) **GENERAL RULE.**—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

(b) **PENALTY FOR FAILURE TO REPORT.**—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.

The estate had argued that section 642(a) created a “window” between December 31, 1983 and June 19, 1984 in which the IRS could not issue a notice of deficiency until an appellate court had “ultimately determined” that project notes were subject to estate taxation. Because the first such determination was the Supreme Court’s decision in *Wells Fargo*, decided after the issuance of the notice of deficiency at issue here, the estate contended that the notice of deficiency was invalid. *Pollenz*, 58 T.C.M. at 1055. The Tax Court concluded that the language in section 642(a)—“to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax”—simply stated the reason the subsection required the reporting of transactions within the “window” to the IRS: to facilitate collection of the tax if the bonds were later found to be subject to the estate tax. The Tax Court thus held that the notice of deficiency was valid.

II

ANALYSIS

The Tax Court held that the Supreme Court's decision in *Wells Fargo* was dispositive of the estate's claim that project notes were exempt from federal estate taxation. This holding was a conclusion of law; therefore, our review is *de novo*.² We must decide a single issue: did section 642(a) of DEFRA exempt public housing agency obligations from federal estate taxation until it was "ultimately determined" that these obligations were subject to estate tax? Our answer to this question begins with the events that gave rise to Congress' decision to enact DEFRA.

Congress enacted the Housing Act of 1937, 50 Stat. 888, to help remedy the severe housing shortage that existed in the late 1930s. This Act was designed to stimulate local housing projects by empowering state and local authorities to issue tax-free obligations. See *Wells Fargo*, 485 U.S. at 353. Section 5(e) of the Housing Act provided that "[o]bligations, including interest thereon, issued by public housing agencies . . . shall be exempt from all taxation now or hereafter imposed by the United States." For almost fifty years, these obligations generally were considered to be exempt from income taxation but not from estate taxation. See *Wells Fargo*, 485 U.S. at 353. In 1984, however, a divided panel of this court affirmed a determination, based on an analysis of the Housing Act of 1937,

² See *Merit Life Ins. Co. v. Commissioner*, 853 F.2d 1435, 1438 (7th Cir. 1988); see also *Gunther v. Commissioner*, 909 F.2d 291, 294 (7th Cir. 1990) ("we owe no special deference to the Tax Court's legal views") (quoting *Prussner v. United States*, 896 F.2d 218, 224 (7th Cir. 1990)); *Vukasovich, Inc. v. Commissioner*, 790 F.2d 1409, 1413 (9th Cir. 1986) ("A general rule of special deference to the Tax Court is inappropriate although its judgments in its field of expertise are always accorded a presumption that they correctly apply the law."); 26 U.S.C. § 7482(a) (providing for review of Tax Court decisions "in same manner and to the same extent as decisions of the district courts in civil actions tried without a jury").

that project notes also were exempt from estate taxation. See *Haffner v. United States*, 757 F.2d 920 (7th Cir. 1985). Congress immediately expressed its disapproval with *Haffner* by enacting DEFRA. Section 641 of DEFRA "eliminated the purported exemption for Project Notes, and also foreclosed those who had already paid estate taxes on Project Notes from obtaining a refund thereon." *Wells Fargo*, 485 U.S. at 353. Section 642 simply required taxpayers to report all transfers of project notes occurring after December 31, 1983, and before June 19, 1984.

The effect of DEFRA, therefore, was to overturn *Haffner* both prospectively and for any case in which a taxpayer or his estate had filed a tax return that treated public housing notes as subject to taxation. The provisions of DEFRA do not address specifically the gift and estate tax treatment for project notes transferred, or held by persons dying, before June 19, 1984, in circumstances in which a tax return did not include the project notes as subject to estate taxation. Consequently, the estate argues that section 642(a) of DEFRA prohibited the IRS from determining any estate tax deficiency until it was "ultimately determined" that project notes were subject to estate taxation. Therefore, reasons the estate, because *Wells Fargo* had not been decided when the IRS issued the deficiency notice and because *Haffner* was the law in this circuit, the notice was issued improperly.

We cannot accept such a reading of the statute. Section 642(a) simply imposes an obligation on *taxpayers* to report certain information to the IRS; it does not mention deficiency notices, much less limit the IRS' power to issue them with respect to project notes. The clause, "to allow determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate . . . tax," merely explains the purpose of the reporting requirement—to provide the IRS with the information to collect the tax if it were ultimately determined that project notes were subject to estate taxation. *Pollenz*, 58 T.C.M. at 1055. Under the interpretation of

section 642(a) advocated by the estate, the statute of limitations would have expired before the IRS could have issued a notice of deficiency to the estate.³ It would be illogical for Congress to enact legislation that requires information to aid in the collection of taxes, yet causes the statute of limitations to bar collection of any estate tax ultimately determined due.

Moreover, nothing precludes the IRS from issuing deficiency notices to taxpayers who reside in circuits that have held against the IRS on a particular issue. While the doctrines of *stare decisis* and precedent are always deserving of great respect, continued litigation is sometimes appropriate to pursue en banc reconsideration within a circuit or to preserve an issue pending disposition by the Supreme Court.⁴ See *Patterson v. McLean Credit Union*, 485 U.S. 617, 617 (1988) (per curiam) ("It is surely no affront to settled jurisprudence to request argument on whether a particular precedent should be modified or overruled."); *Haas v. Abrahamson*, 910 F.2d 384, 393 (7th Cir. 1990) (courts not absolutely bound by prior decisions and must give "fair consideration" to substantial argument for overruling previous decision); *United States v. Anderson*, 885 F.2d 1248, 1255 (5th Cir. 1989) (en banc) (en banc court not bound by panel decision "where a wrong turn has been taken"). To adopt the estate's position would preclude the IRS from ever seeking to relitigate an issue in a circuit court that has previously decided this issue against the IRS.

The Supreme Court's decision in *Wells Fargo* "ultimately determined" that project notes have always been subject

³ Section 6501(a) of 26 U.S.C. provides that any deficiency in income tax must be assessed within three years after a tax return is filed.

⁴ The Supreme Court already had noted probable jurisdiction in *Wells Fargo* when the deficiency notice was issued in this case. See *Wells Fargo Bank v. United States*, 86-2 T.C. ¶ 13,703 (C.D. Cal. 1986), *prob. juris. noted sub nom. United States v. Crocker Nat'l Bank*, 481 U.S. 1047 (1987).

to estate taxation. Nothing in section 642(a) of DEFRA changes this result. The notice of deficiency was expressly authorized by section 6212 of the Internal Revenue Code, 26 U.S.C. § 6212, and properly issued to the estate in this case.

Conclusion

For the foregoing reasons, we affirm the judgment of the Tax Court.

AFFIRMED

A true Copy:

Teste:

*Clerk of the United States Court of
Appeals for the Seventh Circuit*

UNITED STATES TAX COURT
Washington, D.C. 20217

ESTATE OF MOLLIE
RHEINSTROM POLLENZ,
DECEASED, CELENE
RHEINSTROM, ADMINIS-
TRATOR,

Petitioner,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Docket No. 39448-87.

ORDER AND DECISION

Pursuant to the determination of the Court as set forth in T.C. Memo. 1989-680 served on December 28, 1989, it is

ORDERED that respondent's Motion for Summary Judgment filed on October 24, 1988 is granted. It is further

ORDERED AND DECIDED that there is a deficiency in estate tax due from petitioner in the amount of \$674,540.19.

/s/ CHARLES E. CLAPP II

Charles E. Clapp II
Judge

Entered JAN 5 1990

T. C. Memo. 1989-680

UNITED STATES TAX COURT

ESTATE OF MOLLIE RHEINSTROM POLLENZ,
DECEASED, CELENE RHEINSTROM, ADMINISTRATOR,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 39448-87.

Filed December 28, 1989.

Richard A. Rheinstrom, for the petitioner.

Jan E. Lamartine, for the respondent.

MEMORANDUM OPINION

Clapp, *Judge*: Respondent determined a \$674,540.19 deficiency in petitioner's estate tax. This matter is before the Court on respondent's Motion for Summary Judgment.

Petitioner has not submitted any data as required by section 20.2031-2(f), Estate Tax Regs., in connection with the issue of a blockage discount on the value of certain stock nor has she argued the issue in any answer, memorandum of law, or brief filed with respect to respondent's Motion for Summary Judgment. Accordingly, we conclude that such issue has been abandoned by petitioner. The only remaining issue is whether certain public housing bonds should be included in the gross estate. There is no dispute as to any material fact.

Under the United States Housing Act of 1937, ch. 896, 50 Stat. 888, public housing agencies could issue tax-free public housing bonds termed "project notes." For nearly 50 years these bonds were considered to be exempt from income taxation but not estate taxation. However, in 1984, the District Court for the Northern District of Illinois held that project notes also were exempt from estate taxation. *Haffner v. United States*, 585 F. Supp. 354 (N.D. Ill. 1984), *affd. per curiam* 757 F.2d 920 (7th Cir. 1985). Within months of this ruling, Congress enacted section 641 of the Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 939. This section, which was effective for decedents dying on or after June 19, 1984, eliminated the purported estate tax exemption. It also denied refunds for those who had already paid estate taxes on project notes. In 1988, the Supreme Court held that project notes never were exempt from Federal estate tax and, accordingly, found it unnecessary to consider the constitutionality of section 641. *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988); *Estate of Egger v. Commissioner*, 89 T.C. 726, 729-731 (1987). The issue has clearly been settled in respondent's favor.

Petitioner's argument focuses on section 642 of the Deficit Reduction Act of 1984, Pub. L. 98-369, 98 Stat. 939-940, which reads:

- (a) GENERAL RULE.-With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other

information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

(b) PENALTY FOR FAILURE TO REPORT.-Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.

Decedent's date of death was February 4, 1984. The estate tax return, which was filed on November 5, 1984, listed project notes with a value of \$1,171,257.69. Following *Haffner v. United States, supra*, those project notes were not included in the computation of estate tax. Respondent issued the notice of deficiency on October 14, 1987.

Petitioner argues that decedent's date of death was in the "window" set forth in section 642(a) and, thus, respondent was prevented from making a "determination of tax and interest due" (i.e., from issuing a notice of deficiency) until an appellate court "ultimately determined" that public housing bonds were taxable. Petitioner notes that the first appellate determination that public housing bonds were subject to estate tax was *United States v. Wells Fargo Bank, supra*, which was decided after respondent issued the notice of deficiency. Petitioner accordingly argues that the notice of deficiency is invalid. Petitioner supports her argument by analyzing the language of section 642(a). We reject petitioner's argument.

Section 642(a) only requires taxpayers to report certain information to respondent. It does not limit respondent's power to issue notices of deficiency. The language "to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax" merely explains the purpose of the information to be reported to respondent. If we were to adopt petitioner's theory, the statute of limitations would have expired before respondent could have issued the notice of deficiency. Petitioner suggests no reason, and we can think of none, that Congress would pass a statute that requires petitioner to furnish

information that would aid in the collection of tax, yet causes the statute of limitations to expire before respondent can attempt to collect the tax.

We accordingly grant respondent's Motion for Summary Judgment.

Decision will be entered for the respondent.

CERTIFICATE OF SERVICE

I, CELENE RHEINSTROM, Administrator of the Estate of MOLLIE RHEINSTROM POLLENZ, deceased, first being duly sworn on my oath, depose and state that I have this day, mailed three copies of this Petition for a WRIT OF CERTIORARI to the following, with full postage prepaid, and that I have deposited the envelopes in the United States Postal unit, in Chicago, Illinois on _____:

GARY ALLEN, Esquire, Attorney General Designate, Tax Division, Department of Justice, Post Office Box 502, Washington, D.C. Zip Code: 20044, and

Honorable KENNETH W. STARR, SOLICITOR GENERAL FOR THE UNITED STATES, 10th and Constitution Avenue, N.W. Washington, D.C. 20530

Dated: _____

Celene Rheinstrom, Administrator of
the Estate of Mollie Rheinstrom Pollenz

CELENE RHEINSTROM, Administrator
for the Estate of MOLLIE RHEINSTROM POLLENZ
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